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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/472,134	12/23/99	GIROUARD	B PM-265136

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EXAMINER

BOEHLER, A

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 09/12/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/472,134

Applicant(s)
Girouard et al.

Examiner
Anne Marie Boehler

Group Art Unit
3618



☒ Responsive to communication(s) filed on Jun 22, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-83 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-83 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the toe-holds, recited in claims 63, 73, and 83, and the steering shaft positioned over the engine and at an angle of less than 45 degrees from vertical, claims 50-53 (fig. 3 shows the angle, but not the engine, while fig. 14 shows the engine under a steering shaft having an angle of more than 45 degrees from vertical) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. The drawings are objected to because Figure 4 appears to show a position of the handlebar that is inconsistent with the snowmobile position shown in figures 2 and 3. In Figure 2, for example, the steering handlebars are shown so far forward that they almost touch the windshield. It would be impossible for the handlebars shown in Figure 2 to reach the 90 degree turn angle shown in Figure 4 because there is insufficient space behind the windshield. Correction is required.
3. The drawings are objected to because Figure 1 should be labeled "Prior Art". Correction is required.
4. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on June 22, 2000 have been disapproved because they introduce new matter into the drawings. 37 CFR 1.121(a)(6) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the toe hold position, the engine positioned under a steering shaft angled less than 45 degrees from vertical, and the modified wind shield position.

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5. Claims 1-49, 54-58, 61, 64-68, and 77-83 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant improperly defines his invention with respect to a rider's body. In many of the claims (for example claims 1-39), applicant defines the invention with respect to the rider's center of gravity. However, the rider himself (and his body parts and center of gravity) are not statutory subject matter that may define a patentable claim. Also, every rider is different, so it would be impossible to determine the scope of the claim based on an unspecified rider.

Applicant uses terms such as "seat position", "steering position", and "footrest position" which are improperly defined in relation to the human body as well. For example, applicant explains, on page 9, line 9-15, that "the rider will be positioned on seat 128 so that he occupies seat position 130". The seat has a longitudinally elongated support surface, as seen in the drawings (fig. 2, for example) which could define a number of seat positions. Therefore, applicant has defined his "seat position" based on a "standard person" sitting a few seconds after starting the vehicle, heading straight ahead on flat terrain. The actual "seat position" is defined by a line from the rider's shoulder to hip at its intersection point with the seat while the rider is compressing the cushioning of the seat. Therefore, the "seat position" is defined by the user, his weight and measurements at any given time, and where he chooses to position his body while riding the vehicle. This improperly incorporates the user into the claimed combination and is impermissible.

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In claim 58, applicant claims to user's head position which, again, is an improper recitation of the rider.

6. Claims 1-58, 60-61, and 64-83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of the independent claims, the term "type" is indefinite.

Claims 1-49, 54-58, 61, 64-68, and 77-83, which recite structural limitations with respect to their relationship to portions of a human being or "rider", are indefinite because the relationship of parts is not based on any known standard for sizing the vehicle to a rider, but rather on a rider of unspecified build. Such recitations include the "center of gravity of the snowmobile with the rider" (claims 1, 6, 36), "center of gravity of the rider" (claim 16, 20, 26, 30, 36, 61), "seat position", "footrest position", and "steering position" recited (claims 40, 44, 45, 46, 55, 64, 77, 81, and 82), "the rider space" (claim 54), and "the rider's head" (claim 58).

In claim 1, last line, "between about 0 cm and 14 cm" is indefinite because there is nothing to indicate what range of specific activity is covered by the term "about". The same indefinite recitation of a range preceded by "about" appears in claims 2-43, 45-53, 55-57, 64-80, 82, and 83.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 40, 41, 44-49, 63, 69-76, and 81-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Yasui.

Yasui shows a snowmobile with a seat position, footrest position and steering position that are illustrated by a rider shown in phantom in Figure 1. In the drawing the angles shown appear to correspond to those being claims, given a rider in the position shown. Sideboards are shown from the side in fig. 1 and in top view on fig. 3. They appear to have a 5 degree downward slope to the front and a wall that inclines upwardly to form a toe-hold, as broadly recited and disclosed.

9. Claims 50, and 54-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Marier.

Marier shows a snowmobile with a frame, an engine 17, and a steering shaft 104 connected to a ski 22. The steering shaft extends above the engine at an angle of less than 45 degrees from the vertical.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marier in view of Yoshioka.

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Marier fails to show the steering handle at a 33 degree angle from vertical.

Yoshioka shows a snowmobile with a steering shaft angled at about 33 degrees from vertical and disposed above the engine 7.

It would have been obvious to a skilled artisan to angle the steering shaft at approximately 33 degrees from vertical, as taught by Yoshioka, in order to allow a more compact vehicle configuration.

12. Claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Husted in view of Boyer.

Husted shows a snowmobile with a frame 13 and a forward most drive track axle 21 which is positioned behind the steering device 25. The center of gravity of the snowmobile as shown is behind the longitudinal center of the vehicle because most of the weight (from the motor and track) is at the rear of the vehicle+. Therefore, the center of gravity of the vehicle is clearly rearward of the steering device 25, which is positioned entirely in front of the longitudinal center of the vehicle.

Husted shows only one front ski.

Boyer shows a small tracked now vehicle with a rear track and a pair of front skis.

It would have been obvious to a skilled artisan to provide the Husted vehicle with a pair of front skis, as taught by Boyer, in order to provide greater stability.

13. Claim 62 is rejected under 35 U.S.C. 102(b) as being anticipated by Karpik.

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Karpik shows a snowmobile with footrests positioned, shown in figure 3, behind the steering device and below the seat.

14. Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasui.

The rider position shown appears to demonstrate angles of α being about 98 degrees, β being about 44 degrees and γ being about 37 degrees. However, the angles are directly related to the exact positioning of the rider. The seat and footboards allow for a variety of positions, depending on the comfort and dimensions of the rider. Therefore, it would have been obvious for a rider who is taller than the rider shown to sit farther back on the seat, thereby altering the seat and footrest positions so they correspond to those claimed.

15. Applicant's arguments filed June 22, 2000 have been fully considered but they are not persuasive.

Applicant argues that recitation of aspects on the snowmobile relative to the rider is proper because the standard rider is defined in the specification and is merely used as a standard of measure. The examiner disagrees. Applicant has clearly avoided claiming dimensions of the snowmobile with respect to a known standard. The examiner sees no reason why, if applicant meant to claim particular dimensions of the vehicle, he did not do so. Even if the standard rider's dimensions were adequately defined in the specification, even a "standard" rider could assume different positions on a vehicle, depending on his posture, flexibility, and personal preference. Therefore, the examiner believes defining the vehicle structure based in the positioning of even a well defined "standard" rider is indefinite and the scope of the claims cannot be determined.

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Applicant argues that Yasui fails to teach toe holds. However, applicant has not defined the toe holds or shown them in a way that defines over the toe abutment at the front end of the footboard that secures the foot against forward movement. Therefore, the rejection is being maintained.

Applicant argues that Marier shows a steering shaft angled at exactly 45 degrees. The examiner disagrees. The angle of the steering shaft in Figure 1 appears to be less than 45 degrees. Therefore, the limitations of claim 50 is believed to be met. Applicant also indicates that there is no teaching in Marier to make the angle any steeper than that shown. However, various steering shaft angles are shown among the prior art references. The exact angle appears to be a design choice based on the particular configuration desired. Yoshioka shows the steering shaft angle claimed. Therefore, that angling of the steering shaft does not appear to be distinguishing over the prior art.

Applicant indicates that the rejection based on the Hustead reference is moot because claim 62 has been canceled. However, claim 62 remains in the case and the rejection is being maintained.

Applicant indicates that, because Yasui is a small scaled vehicle it is not designed for a standard rider. The examiner maintains that defining the vehicle based on a "standard rider" is improper and indefinite for the reasons given above. The Yasui reference meets the claim limitations as can be determined from the claim language.

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16. Applicant's arguments with respect to claims 51-53 and 59-61 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Boehler number is (703) 308-0422

anne boehler 9/11/00
ANNE MARIE BOEHLER
Primary Examiner

boehler
September 11, 2000